

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**RUTH SMITH**, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

**SUNPATH, LTD.**, a Massachusetts corporation,

Defendant.

Case No. 1:22-cv-00081-LMB-WEF

**DEFENDANT SUNPATH, LTD.'S OBJECTIONS TO PLAINTIFF'S  
TRIAL EXHIBIT LIST**

Pursuant to the Court's Order dated August 5, 2022, ECF No. 25, Defendant SunPath Ltd. ("SunPath"), by counsel, and pursuant to Federal Rule of Civil Procedure 26(a)(3)(B), sets forth the following objections to Plaintiff's Trial Exhibit List, ECF. No. 54.

<b>Ex. #</b>	<b>Bates #</b>	<b>Description</b>	<b>SunPath's Objections</b>
1	N/A	Stipulated Facts	
2	SMITH000022-26	May 28, 2020, 6:03 pm Email (w/link to website)	Fed. R. Evid. 802 – Hearsay
3	SMITH000029-30	June 11, 2020 Email	
4	SMITH000021	National Do Not Call Registry – Registration Confirmation	
5	SMITH000027	Call Recording	Fed. R. Evid. 802 – Hearsay
6	SMITH000028	Call Recording	Fed. R. Evid. 802 – Hearsay
7	SMITH000031-36	Notes of Calls	Fed. R. Evid. 802 – Hearsay
8	N/A	Plaintiff's Objections and Responses to Defendant's First Set of Discovery Requests	Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 802 – Hearsay
9	N/A	Plaintiff's First Supplemental Objections and Responses to Defendant's First Set of Discovery Requests	Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 802 – Hearsay

10	N/A	Plaintiff's Second Supplemental Objections and Responses to Defendant's First Set of Discovery Requests	Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 802 – Hearsay
11	N/A	Plaintiff's Third Supplemental Objections and Responses to Defendant's First Set of Discovery Requests	Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 802 – Hearsay
12	N/A	Call Center Marketing Agreement (with Standards of Conduct)	
13	N/A	Defendant's Responses to Plaintiff's First Set of Discovery Requests	
14	N/A	Defendant's Supplemental Responses to Plaintiff's First Set of Discovery Requests	
15	N/A	CALL CENTER MARKETING AGREEMENT.pdf	
16	N/A	SELLER AGREEMENT.pdf	Fed. R. Evid. 402 – Relevance
17	N/A	American Protection Corp Sales Script.docx	Fed. R. Evid. 802 – Hearsay
18	N/A	American Protection Corp.pdf	
19	N/A	DNC Policy.pdf	
20	N/A	CRM tabs expanded_001.pdf	
21	N/A	Appointment by sunpath_001.pdf	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 802 – Hearsay
22	N/A	American Protection Florida Appointment for Sunpath - Licensee Detail.pdf	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 802 – Hearsay
23	N/A	Postcard.pdf	
24	N/A	Letter1.pdf	
25	N/A	Gmail – Email Quote Summary.pdf (May 28, 2020, 3:30 pm Email)	Fed. R. Evid. 802 – Hearsay
26	N/A	AmericanProtectionCorporation2-20180501-20180531.csv	Fed. R. Evid. 402 – Relevance

			Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
27	N/A	AmericanProtectionCorporation2-20180601-20180630.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
28	N/A	AmericanProtectionCorporation2-20180701-20180731.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
29	N/A	AmericanProtectionCorporation2-20180801-20180831.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
30	N/A	AmericanProtectionCorporation2-20180901-20180930.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation

			Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
31	N/A	AmericanProtectionCorporation2- 20181001-20181031.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
32	N/A	AmericanProtectionCorporation2- 20181101-20181130.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
33	N/A	AmericanProtectionCorporation2- 20181201-20181231.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
34	N/A	AmericanProtectionCorporation2- 20190101-20190131.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
35	N/A	AmericanProtectionCorporation2- 20190201-20190228.csv	Fed. R. Evid. 402 – Relevance

			Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
36	N/A	AmericanProtectionCorporation2-20190301-20190331.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
37	N/A	AmericanProtectionCorporation2-20190402-20190430.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
38	N/A	AmericanProtectionCorporation2-20190501-20190531.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
39	N/A	AmericanProtectionCorporation2-20190601-20190630.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation

			Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
40	N/A	AmericanProtectionCorporation2- 20190701-20190731.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
41	N/A	AmericanProtectionCorporation2- 20190801-20190831.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
42	N/A	AmericanProtectionCorporation2- 20190901-20190930.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
43	N/A	AmericanProtectionCorporation2- 20191001-20191031.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
44	N/A	AmericanProtectionCorporation2- 20191101-20191130.csv	Fed. R. Evid. 402 – Relevance

			Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
45	N/A	AmericanProtectionCorporation2-20191201-20191231.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
46	N/A	AmericanProtectionCorporation2-20200101-20200131.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
47	N/A	AmericanProtectionCorporation2-20200201-20200229.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
48	N/A	AmericanProtectionCorporation2-20200301-20200331.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation

			Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
49	N/A	AmericanProtectionCorporation2- 20200402-20200430.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
50	N/A	AmericanProtectionCorporation2- 20200501-20200531.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
51	N/A	AmericanProtectionCorporation2- 20200601-20200630.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
52	N/A	AmericanProtectionCorporation2- 20200701-20200731.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
53	N/A	AmericanProtectionCorporation2- 20200801-20200831.csv	Fed. R. Evid. 402 – Relevance



			Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
54	N/A	AmericanProtectionCorporation2-20200901-20200930.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
55	N/A	AmericanProtectionCorporation2-20201001-20201031.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
56	N/A	AmericanProtectionCorporation2-20201101-20201130.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
57	N/A	AmericanProtectionCorporation2-20201201-20201231.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation

			Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
58	N/A	AmericanProtectionCorporation2- 20210101-20210131.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
59	N/A	AmericanProtectionCorporation2- 20210201-20210228.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
60	N/A	AmericanProtectionCorporation2- 20210301-20210331.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
61	N/A	AmericanProtectionCorporation2- 20210402-20210430.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
62	N/A	AmericanProtectionCorporation2- 20210501-20210531.csv	Fed. R. Evid. 402 – Relevance

			Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
63	N/A	AmericanProtectionCorporation2-20210601-20210630.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
64	N/A	AmericanProtectionCorporation2-20210701-20210731.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
65	N/A	AmericanProtectionCorporation2-20210801-20210831.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
66	N/A	AmericanProtectionCorporation2-20210901-20210930.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation

			Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
67	N/A	AmericanProtectionCorporation2- 20211001-20211031.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
68	N/A	AmericanProtectionCorporation2- 20211101-20211130.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
69	N/A	AmericanProtectionCorporation2- 20211201-20211231_part_1.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
70	N/A	AmericanProtectionCorporation2- 20211201-20211231_part_2.csv	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
71	N/A	Five9_AmericanProtection_000001.xlsx	Fed. R. Evid. 402 – Relevance

			Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay
72	NA	Summary of Five9 call records relating to Plaintiff's phone number	Fed. R. Evid. 402 – Relevance Fed. R. Evid. 403 – More Prejudicial than Probative Fed. R. Evid. 602 – Lack of Foundation Fed. R. Evid. 701 – Improper Lay Witness Opinion Fed. R. Evid. 802 – Hearsay

Dated: December 30, 2022

Respectfully submitted,

SUNPATH, LTD.

By Counsel

/s/ Mitchell N. Roth

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*Counsel for SunPath, Ltd.*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the above and foregoing Defendant SunPath, Ltd.'s Objections to Plaintiff's Trial Exhibit List to be served upon counsel of record in this case via the U.S. District Court CM/ECF System on December 30, 2022.

/s/ Mitchell N. Roth

Mitchell N. Roth